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Preparing Witnesses For Trial—A Methodology for New Judge Advocates[1]

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30th Graduate Class, TJAGSA

Few contested military trials are won or lost on novel or narrow questions of law. Few contested military trials are won or lost on the arguments of counsel. Contested military trials are won or lost on the testimony of witnesses, whether elicited by direct examination, cross-examination or examination by the military judge or court members.

This article's purpose is to provide a basic methodology for preparing witnesses to testify at courts-martial. It is intended as an aid for the judge advocate newly assigned to trial duties who has not had a chance to develop a systematic approach to trial preparation.

It is also for the more experienced judge advocate who is not fully satisfied with his or her work. If you have experience, ask yourself: Do I get surprised at trial by either side's witnesses? If surprised, am I unable to impeach? Am I learning new angles to my case for the first time at trial so I am unable to follow up?

If the answers are no, don't read this article. You don't need it.

[1]The words "he," "him," and "his" as used in this article represent both masculine and feminine genders.

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D.C. 20310

REPLY TO ATTENTION OF

DAJA-ZX

JUN 0 9 1982

SUBJECT: Trial Counsel Assistance Program (TCAP) - Policy Letter 82-4

ALL JUDGE ADVOCATES

1. On 1 August 1982 the Trial Counsel Assistance Program will begin operating under the aegis of Government Appellate Division. Its purpose is to provide advice to and training for trial counsel, thereby improving the quality of advocacy on behalf of the Government.

2. TCAP will provide numerous services for trial counsel. First, TCAP will present biannual regional seminars within CONUS to enhance the advocacy skills of trial counsel. Second, TCAP will review records of trial and furnish critiques of trial counsel performance to designated personnel of your office. Third, TCAP will furnish monthly updates designed to keep trial counsel current in military criminal law and to address specific problem areas. Fourth, TCAP personnel will answer questions from trial counsel. Depending upon the complexity of the problem, these answers may be telephonic or in the form of previously submitted briefs or original position papers. To accurately assess the impact of TCAP on Army trials, it is imperative that TCAP be the primary source, outside the judge advocate office, of advice to trial counsel. Fifth, at the request of the Staff/Command Judge Advocate, TCAP personnel are available for technical assistance visits within CONUS to help in particularly convoluted cases or offer advice with respect to administrative problems.

3. In summary, TCAP is a group of criminal law specialists who are devoted to assisting you. They will not usurp your prerogatives or interfere with the actions of trial counsel. Although the bulk of assistance rendered will be based upon your requests, you can expect calls from TCAP to determine whether problems exist.

4. I am convinced that TCAP fulfills a need. With your cooperation, it can make the best system of justice even better.

Hugh J. Clausen

HUGH J. CLAUSEN
Major General, USA
The Judge Advocate General

If the answer is yes, then these thoughts on systematic witness preparation may be helpful.

The role of the lawyer in witness trial preparation varies among legal systems. In the civil law system, with judge-run inquisitorial trial, prosecutors and defense counsel do little to prepare witnesses or question them at trial.[2] While the common law adversarial trial necessarily involves lawyers in the presentation of witnesses, practices vary in witness preparation. In English criminal trials, for example, the barrister who tries the case does not see the witnesses before trial. Witnesses are prepared by the solicitor who puts the case together.[3]

In the United States and in military practice, however, it is the trial counsel's and defense counsel's responsibility to investigate the case[4] and to prepare and present witnesses. Your skill as an advocate will be measured largely by how well you perform this task.

The goal of witness preparation for the proponent is enhanced credibility. It is generally true that how you see a witness in your first interview is the way the court is going to see him. Preparation, however, can enhance your witness' credibility and effectiveness by clarifying his testimony, reducing his fear, and smoothing his rough edges.

The goal of witness preparation for the opponent is pinning the witness down and preparing for cross-examination. The focus is on limiting unfavorable facts, discovering bias, and eliciting favorable information. The witness must be pinned down so that if his testimony varies from your interview, he can be impeached.[5]

I. Step One: Analyze Your Case

Your case must be fully investigated and analyzed before beginning final witness preparation. The military justice pretrial process is so open and discovery is so free that a trial or defense counsel should rarely be surprised at

[2] *See* Jescheck, *Principles of German Criminal Procedure*, 56 Va. L. Rev. 248-250 (1970).

[3] *See* Stafford, *Trial By Jury—The English Way*, 66 A.B.A.J. 330, 331 (1980); Mann, *A Look at the English Barrister*, The Army Lawyer, Feb. 1976, at 4.

[4] *See* ABA Standards, The Prosecution Function 3-3.1(a) (hereinafter cited as PF) and ABA Standards, The Defense Function 4-4.1 (hereinafter cited as DF). These standards and the ABA Code of Professional Responsibility are applicable to lawyers involved in Army court-martial proceedings. Army Reg. No. 27-10, Military Justice, paras. 2-31, 18-12a (C21, 15 Sep 1981) [hereinafter cited as AR 27-10].

[5] *See* Mil. R. Evid. 613.

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trial.[6] Understanding your case means that you can focus your preparation with each witness on the relevant and pivotal issues. Clarity and impact of testimony will be enhanced.

Analyzing the Law

How do you analyze your case? The first step is obvious—know the law of the offense charged and any known or anticipated defenses. The methodology is simple. Research begins with the Manual for Courts-Martial (MCM) discussion of the crimes and defenses[7] and goes on to a reading of the military judge's instructions.[8]

But don't stop there. Go on to read every other instruction that might be given at trial such as circumstantial evidence and expert testimony. Also think about instructions that you may draft and offer to tailor the law to your case.[9]

The final step in analyzing the law of your case is to read the MCM and judges' instructions on lesser included offenses.[10] attempt,[11] and principals.[12] The law of lesser included offenses, attempt and principals are traps for the unprepared. The trial counsel who has not thought through these possibilities has lost a tool for salvaging a conviction or surviving a motion for a finding of not guilty when the proof varies from the expected. The defense counsel who hasn't thought through these possibilities may inadvertently let his client judicially confess to them.

Analyzing the Facts

The second step is to analyze your facts.

You must look at your facts from two viewpoints. The first viewpoint is straight proof analysis—are there facts to support each element of the offense, the defense, a lesser included offense, an attempt, or a principal theory? This analysis is detached and objective.

The second viewpoint is your judgment of what the *real* issue is. Why is this case being contested? What is the fight going to be about? Why isn't the accused taking advantage of the Army's generous "beat the deal" pretrial agreement practice?[13] Is the real issue the failure of one element of the offense or is it an affirmative defense? Or does the case have a theme that does not amount to a legal defense but presents extenuating and mitigating factors so that jury nullification or light punishment is reasonably expected? Examples of theme or equitable defenses are unclean hands by the government, often poor leadership, and "deserving" victims.

The defense counsel knows the real issue. The trial counsel, however, must work to discover it.

Putting an Adversarial Focus on the Facts

Now that you understand your facts from an objective proof analysis and real issue viewpoints, you are ready to marshal facts to the law from an advocacy viewpoint. This is where you decide how to persuade your factfinder.

An effective technique for marshaling and analyzing the facts from an advocacy viewpoint

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[6] *See, e.g.*, Uniform Code of Military Justice Art. 32, 10 U.S.C. § 832 (1976) [hereinafter cited as U.C.M.J.]; Manual for Courts-Martial, United States, 1969, (Rev. ed.), para. 44*k* [hereinafter cited as MCM, 1969].

[7] MCM, 1969, Chs. XXVIII, XXIX.

[8] U.S. Dep't of Army, Pamphlet 27-9, Military Judges' Benchbook, (May 1982), Chs. 3, 5 [hereinafter cited as Military Judges' Benchbook].

[9] MCM, 1969, para. 73d.

[10] U.C.M.J., Art. 79, (1976); MCM, 1969, para. 158, App. D (Table of Commonly Included Offenses); Military Judges' Benchbook, para. 2-28 and Ch. 3.

[11] U.C.M.J., Art. 80; MCM, 1969, para. 159; Military Judges' Benchbook, para. 3-2. Note that an accused may also be found guilty of an attempt to commit a lesser included offense, U.C.M.J., Art. 79.

[12] U.C.M.J., Art. 77; MCM, 1969, para. 156; Military Judges' Benchbook, para. 7-1.

[13] *See* U.S. Dep't of Air Force, Manual No. 111-1, Military Justice Guide, para. 4-8a (C5, 24 Nov. 1980) (Air Force policy which discourages pretrial agreements).

is to outline your closing argument. To frame your argument, use the military judge's instructions verbatim for the law and marshal the facts in a persuasive way to prove the point.

The technique does several things for you. First, when you argue the instructions' actual phrases in a trial with court members you get reinforcement of your argument when the judge, who the court members view as impartial, repeats what you said. You know you've scored points when, as the judge repeats what you've said, a look of understanding dawns on the members' faces. Even in a bench trial the technique is effective because you are focusing issues in familiar terms.

Second, and more importantly for witness preparation, the technique of outlining your closing at this point puts your case in extremely sharp focus. Your success or failure in framing a persuasive argument will now be painfully apparent. You can now effectively finalize your case by looking for ways to bolster your proof. More investigation may be called for which can lead to new witnesses or other types of evidence. With existing witnesses, new lines of questioning are suggested that you can pursue in your final interview so that you can present every shred of evidence that bolsters your witness and your case. If you are the opponent of a witness, new lines of attack become apparent.

Use all the expected instructions even though you may not ultimately argue on them so you can learn the strengths and weaknesses of the entire case. Hidden issues will become apparent and you can react to bolster or exploit weaknesses.

II. Step 2: Analyze The Witness

Analysis of the witness uses the same methodology as analysis of your case. Outline your closing argument about the witnesses by marshaling facts to the verbatim analytical factors in the credibility of witnesses instruction.[14] These verbatim phrases should be on the tip of your tongue to aid you in argument and in precise evaluation of the witness during interviews and during his trial testimony.

Basically, though there is overlap, the factors can be divided into three groups—knowledge, bias, and relationship to other evidence.

The knowledge factors are: intelligence, ability to observe, and ability to accurately remember.

The bias factors are: sincerity, conduct in court, friendships and prejudicies, character for truthfulness, relationship to either side of the case, probability of the statement, and manner in which the witness might be affected by the verdict.

The relationship to other evidence factors are: whether supported or contradicted by other evidence; if contradicted, whether innocent mistake or deliberate lie; and, if contradicted, whether it pertains to a matter of importance or to an unimportant detail.

In using these factors you have put a sharp adversary focus on your witness preparation. Again, more investigation and lines of questioning will be suggested either to bolster or limit the witness' testimony. For example, in looking at a key eyewitness' ability to observe, counsel would discover through investigation, elicit through testimony, and argue on findings specific facts such as lighting, distance, clear view, that his attention was focused on the event, that he has 20/20 vision with his glasses on, that his glasses were on, that he wasn't intoxicated at the time, that he didn't feel endangered or emotional at the time, that he expected the event to occur, and so on.[15]

Similarly, factors showing the presence *or absence* of bias factors should be explored with

[14] Military Judges' Benchbook, para. 7-7.

[15] For an exhaustive treatment on using a witness' knowledge, recollection; perception (sight, hearing, touch, etc.), action (by words or conduct), state of mind (feelings, emotions, etc.), and operation of mind (opinions, conclusions, etc.) to boster proof *see* 1 & 2 L. Schwartz, Proof, Persuasion, and Cross-Examination: A Winning New Approach in the Courtroom (1973).

each witness. Does he know either party, does he admit to friendship, can you get his company commander or first sergeant to attack or support his character as to truth and veracity.[16] Every witness is either biased or not and if the witness is important the presence or absence of bias should be addressed.

Finally, the intangibles of testifying such as demeanor, deportment and intelligence, though readily recognized by all present, are seldom argued in military courts. Fair comment on important witnesses should not be overlooked.

Dealing with and analyzing witnesses is the heart of criminal trial advocacy. Handling individuals with all their nuances should be a source of enjoyment and satisfaction of the advocate. Such an attitude will not only make you a better advocate but will help prevent the eighteen month court-martial burnout that seems so common. This is so because you will see cases as being different because of their facts and the personalities of the witnesses rather than just another larceny or just another sale of heroin.

III. Interviewing and Preparing Your Witness

You should have initially interviewed the witness long before your final trial preparation. Both counsel should interview each witness as soon as the witness becomes known to them. The trial counsel usually gets the jump and should take advantage of it. Except for a witness who is represented by counsel for that matter[17] and the accused,[18] either counsel may interview any witness without the consent of the opposing counsel.[19]

Interviewing and preparing witnesses present ethical issues. Factors involved are the obligation not to create or use perjured testimony and false evidence,[20] a prosecutor's duty to seek truth and justice,[21] and the tension created by a defense counsel's duty to the court and client.[22]

The issue, simply stated, is what is the difference between refreshing recollection and improper coaching? A related problem is when does a lawyer "know" evidence is false?[23] At what point should counsel explain the "law" to the witness or client? Finally, at what point does a lawyer's tone, choice of words and inflictions raise to the level of participating in the creation of evidence he or she knows is false?

While the question of when a lawyer "knows" something is unsettled, it *is* settled that no counsel, by any stratagem, may encourage a

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[16] *See* Mil. R. Evid. 404(a)(3), 405(a), 607, 608.

[17] *See* ABA Code of Professional Responsibility Disciplinary Rule 7-104(A)(1) [hereinafter cited as DR; Ethical Considerations will be cited as EC].

[18] MCM, 1969, para. 44h.

[19] MCM, 1969, para. 42c.

[20] *See* DR 7-102(4), (6); PF 3-5.6(a).

[21] *See* DR 7-103; EC 7-13; PF 3-3.11.

[22] *See* G. Hazard, Ethics in the Practice of Law 130-133 (1978); M. Freedman, Lawyers Ethics in an Adversary System 59-77 (1975) [hereinafter cited as Freedman]. In earlier writings Freedman advocated that it was proper for a defense counsel to, as in the now famous *Anatomy of a Murder* situation, assist the accused in creating a fact defense. Freedman, *Professional Responsibility of the Criminal Defense Lawyer: The Three Hardest Questions*, 64 Mich. L. Rev. 1469 (1966). He now concludes that defense counsel who assist in the creation of evidence "do so on their own responsibility and at their own risk, and without the sanction of the generalized standards of professional responsibility." Freedman at 76. Freedman's earlier theory, which was based on perceived ambiguities of the Code of Professional Responsibility, was not available to military defense counsel who since the 1951 Manual have been governed by less ambiguous language forbidding any counsel to aid any witness in suppressing or deviating from the truth. MCM, 1969, para. 42c. *See* AR 27-10, para. 2-31.

[23] Knowledge is not clearly defined in the ABA Code. EC 7-26 states only that counsel can present evidence unless he "knows or from facts within his knowledge should know, that such testimony is false, fraudulent or perjured." *See* American Bar Foundation, Annotated Code of Professional Responsibility 314-318 (1979). For a discussion of defense counsel "knowledge" of his client's guilt *see* Freedman, *supra* note 21, at 51-58. For discussion of the prosecutor's parallel problem of prejudging credibility *see* Unviller, *The Virtuous Prosecutor in Quest of an Ethical Standard: Guidance from the ABA*, 71 Mich. L. Rev. 1145, 1155-1159 (1973).

witness to suppress or deviate from the truth.[24] The lawyer can explore the testimony, explain the law, and rehearse direct and cross-examination, so long as he does not intend or anticipate that the witness will create testimony that is contrary to the facts.

Refreshing Your Witness' Memory

Your task is to peak your witness' recollection so that they may effectively testify on direct and cross-examination.

The first step is to have the witness read copies of previous statements given to investigators and the summarized record of the Article 32 investigation, if any. Explain that your purpose is to refresh his recollection and that he must testify from this memory and not from the previous statements. Explain what a summarized record is so he won't be confused by the Article 32 transcript. Be sure to ask if any other statements were given, especially statements given to opposing counsel. As to each statement, ask if there are any errors in it. Ask whether something is misleading, incomplete, or if he now recollects a point differently. Whether you expect trouble or not, explain how impeachment and rehabilitation works. If there is going to be a discrepancy between the testimony and past statements, you must fully understand and be able to present the explanation.

The next step is to revisit the scene. A visit with you is essential if distances, positions of parties and other "opportunity to observe" factors are crucial and likely to be contested. Distances can be stepped off or measured for later testimony.

The final step for refreshing recollection is often ignored by new judge advocates. Have the physical evidence at the interview. It is incredible how often this basic step is not done. The reason for this failure seems to be a reluctance to get in the chain of custody or an unwillingness to be responsible for safeguarding evidence, particularly controlled substances. Also, many counsel neglect to open up evidence that has been sealed by the crime laboratory. These perceived obstacles to having the evidence available for witness preparation are easily surmounted. Have a clerk do the handling of the evidence or be present with you so that your testimony is unnecessary.[25] Most offices have safes, use them. Finally, tell opposing counsel when you are opening up sealed evidence containers. Invite defense counsel to come and watch or to send a representative. Get assurance that the laboratory seal being broken by you will not be made an issue at trial.

Having the evidence present is not only invaluable in refreshing recollection but also gives the trial counsel a chance to run through the appropriate identification or chain of custody foundation.

Defense counsel failures to examine evidence, particularly sealed controlled substances, often means undiscovered issues, such as when the evidence does not match the description on the control documents.[26]

Rehearsal

Important witnesses should be brought through their direct examination and probable cross-examination at least one time, preferably in the courtroom. Warn him about questions from the judge and members so that he is not surprised. Don't rehearse a patterned question and answer routine or the testimony will look rehearsed and lack spontaneity, so warn him that questions will not be asked in exactly the same way at trial.

Since most military courtrooms are not in continuous use there is usually little excuse for not going through the testimony in the actual courtroom.

An exception to rehearsal, though not to interviewing, is the emotional victim. Too much

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[24] *See* note 19, *supra*.

[25] DR 5-102(A).

[26] *See generally* U.S. Dep't of Army, Field Manual 19-20, Law Enforcement Investigations 238-267 (29 Apr. 1977). [Hereinafter cited as FM 19-20].

testifying may flatten a witness' naturally dramatic indignation, fear, or embarrassment.

Courtroom Conduct Checklist[27]

The purpose of the items on this checklist is to help your witness give the best possible impression. Most witnesses have never testified and are not used to public speaking. They are nervous. There may be psychological symptoms such as tunnel vision, the room seeming larger than it is, a feeling of impingement on personal space, or a tendency to curl into a fetal position.[28] Your job is to alleviate the nervousness as much as possible by eliminating embarrassment and reducing surprise.

1. How to take the stand. You can avoid apprehension and embarassment for a witness by telling him where to wait, who will bring him into the courtroom and where to stand to take the oath. Tell him that marching and squared corners are not required. Older soldiers wrongly think that they must report to and salute the president of the court. Show the witness where everyone sits and especially explain the court reporter and the steno mask.

2. Taking the oath. Have your witness created a good first impression by standing tall for the oath and say "I do" positively and convincingly.

3. Wear all badges and decorations. Soldiers instinctively judge other soldiers by their appearance. Your witness will create a good first impression with a haircut, shined shoes, and a fresh uniform with all badges and decorations properly placed.

4. Opening questions. Explain to your witness that you will ask several general questions such as name, rank, unit, how long he's been in that unit, etc. The purpose is to get the witness relaxed and used to talking with simple questions and answers. A second equally important purpose is to give the factfinder a chance to size up the witness before settling back to listen to the heart of the testimony.

5. Listen carefully to all questions. If the witness doesn't understand the question he should say so.

6. If an answer is incorrect, correct immediately. An answer that didn't come out right by being inaccurate or misleading must be corrected immediately.

7. Don't volunteer information. The witness can explain or clarify if necessary, but he must understand to answer only the question asked on direct or cross-examination. Volunteering information presents too much opportunity for exploitation by your opponent.

8. Talk in paragraphs. Pause when it's natural to do so—usually after completing a thought pattern. Generally a witness who blurts it all out in a long narrative will miss much testimony while an overcontrolled witness' testimony will lack dramatic impact. Talking in paragraphs is a compromise which is natural for most witnesses because he can stop after completing a thought pattern.

9. Explain generally the evidentiary concepts of personal knowledge, conclusions and leading questions. The witness must know that he is testifying about facts—what he saw and what he heard. Factual testimony is dramatic, conclusionary testimony lacks impact. Explain the difference using examples such as "He was angry" as a conclusion and "He turned red and slammed his fist into the wall" as the facts.

10. If an estimate is made, say so. Time and distance testimony is dangerous for the witness' proponent. People simply are not good at estimating either. Testifying to an estimate as fact can severely weaken testimony, such as the forcible sodomy victim who states that the act lasted forty-five minutes.

Studies have shown that people can accurately estimate time up only to six seconds.[29] If you

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[27]The checklist was compiled in part from H. Rothblatt and F. Bailey, Investigation and Preparation of Criminal Cases 84, 85 (1970) and Matt and Nagurney, *Suggestions For Witnesses*, The Practical Lawyer, September 1, 1979, at 63-66.

[28]J. Sink, Political Criminal Trials, 217-222 (1974).

[29]*See* Lezak, *Some Psychological Limitations on Witness Reliability*, 20 Wayne L. Rev. 117, 121 (1973).

closely question the witness the bottom line will normally be that he has no idea how long it was but it seemed like a long time. Unless the witness was looking at a clock or has some other objective measure all time testimony is an estimate and should be so qualified.

As noted above, the best way to deal with distance testimony is to return to the scene and step it off or measure it. It will enhance their credibility to testify, that they, in an effort to be accurate returned to the scene at your request and did the measurements. To illustrate distances in court certain distances should be premeasured, e.g. length of jury box, distance from witness chair to counsel's desk, and the length, width and diagonal of the courtroom. These distances can be stipulated or agreed to during the testimony or a clerk who did the measuring can be called to testify.

11. Don't exaggerate or make overly broad generalizations. Hyperbole has no place in testimony and will lead the factfinder to discount the exaggerating witness' testimony.

12. Be silent if judge interrupts or lawyer objects. Explain that the witness must simply stop talking when these events occur and that he will be told when to resume. Anticipated objections and idiosyncracies of opposing counsel should also be explained.

13. It's okay to discuss the case with the lawyer. Assure the witness it's proper for you and the opposing lawyer to discuss the case with him. As discussed below, most laymen misunderstand this and some lawyers attempt to exploit this on cross-examination. If he is asked in court if he discussed the case with you, tell him to respond "Yes, of course I discussed the case with Captain Smith and he told me to tell the truth!"

14. Explain the theory of the case and where the witness fits in. Understanding your case makes testifying easier and the witness can better face cross-examination.

15. Relevance, tell the witness he's not on trial. Put the witness at ease by explaining that he's not going to be questioned about irrelevant personal matters such as most juvenile offenses,[30] or be current marital difficulties. Be sure, however, that you know of any relevant impeaching matters.[31]

16. Don't look at me. Tell the witness that if he gets into difficulty with cross-examination or questions from the defense counsel or court members he should look at the military judge. Looking at you will suggest coaching.

17. On cross-examination. The rules are:
Be firm and polite.
No sarcasm.
Don't try to outwit the opposing lawyer.
Don't be bullied into a yes or no answer if question not capable of such an answer.
If feel the need to explain, do it, but don't volunteer information.
Tell the truth, it's the best defense to cross-examination.
Finally, explain that you can do redirect examination to clarify matters.

18. Conduct outside the courtroom—Be serious. Explain about not discussing the case except with the lawyers and how to bow out of hallway encounters with court members. You must guard against the witness compromising himself in front of court members at lunch or recess by not having a professional, serious demeanor or by other inappropriate conduct. It does the trial counsel's case no good to have a court member see the accused and the victim eating lunch together at the snack bar.

Two final points. When you wrap up an interview with any witness always ask, "Is there anything about this matter that I haven't asked you about or we haven't discussed that you think I ought to know?" No matter how sharp a fact finder you think you are witnesses will often astound you with their response.

Also, continually emphasize to your witness that you are only interested in the truth and that he's not there as your witness but as a

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[30] Davis v. Alaska, 415 U.S. 308 (1974); Mil. R. Evid. 609(d).

[31] *See* Mil. R. Evid. 404(a)(3), 405(a), 607, 608, 609.

witness to aid the court in finding the truth. Not only is this position ethically sound,[32] but your integrity will rub off on your witnesses and give them a convincing, unbiased demeanor.

IV. Interviewing and Preparing the Opposing Witness

The openness of the military pretrial procedure makes surprise material witnesses a rare occurence. Because of this the axiom that you should never ask a question that you don't know the answer to is especially applicable to military trials. It is equally applicable to direct and cross-examination.

Getting Cooperation

Let's assume you've discovered an opposing witness. How do you get him to cooperate?

If he initially refuses to talk you have a choice. You can let him go and impeach him at trial and show his bias by his refusal to talk to you. Or you can try to gain his cooperation. Normally your need to discover and pin down his testimony will far outweigh any benefits of impeachment.

Persuading the witness to cooperate may involve several steps until you identify and overcome the reason for resistance. Following is a step-by-step approach.

First, explain that its okay for him to talk with you. Many laymen believe its unethical to talk with any lawyer before testifying, especially an opposing lawyer. Assure him that it is completely ethical, that its done all the time, and that no lawyer worth his salt would not do it.

Another problem may be loyalty. The witness may feel he is the other side's witness and shouldn't help you. Explain that no witness "belongs" to one side or the other. Explain that all witnesses are the courts' witnesses and are there to help the court discover the truth.[33] The witness can help you bring the truth to the court by cooperating.

If the loyalty problem is not overcome by that argument you may attempt to get the opposing lawyer, if he knows about the witness or if you don't care if he knows about him at this point to help you. Whether trial or defense counsel, the opposing lawyer cannot discourage or obstruct your communication with a witness.[34]

If the witness is uncooperative because he doesn't want to testify *at all* you may, if the witness is military, have to educate him about the dishonorable discharge and five years confinement possible for wrongfully refusing to testify[35] and about administrative holds if a rotation date from overseas is approaching. If approaching separation is the problem, explain that testimony substitutes such as depositions[36] and stipulations[37] are possible.

Compulsory process for civilians depends on their location and the trial's location.[38]

Pinning Them Down

If the witness will talk you must nail down his testimony so you know how badly he damages your case and so you can impeach him with a prior inconsistent statement if he varies at trial.[39] A witness who has given a prior statement to investigators or who testified at an Article 32 investigation should especially be pinned down if what he tells you in your interview varies significantly from previous statements. Now you can impeach him no matter what he says on the stand. Few trial moments are more frustrating than as when a witness changes material testimony and you, short of withdrawing, are unable to impeach him.

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[32] *See* Commentary to PF. 3-3.1(c) and DF 4-4.3(c).

[33] *Id.*

[34] *Id.*

[35] MCM, 1969, para. 127c, Table of Maximum Punishments, Sec. A.

[36] MCM, 1969, para. 117.

[37] MCM, 1969, para. 54f(2).

[38] *See* U.C.M.J., art. 46, 47; 28 U.S.C. § 1783 (1976); MCM, 1969, para. 115.

[39] Mil. R. Evid. 613.

There are basically three ways to pin down a witness' testimony and prove a prior inconsistent statement—oral, recorded and written.

Oral is the least desirable method. Ethical standards for both trial and defense counsel demand that a lawyer have a third party present at the interview to give the impeaching testimony. If no third party is present the lawyer must withdraw from the case to present the impeaching testimony.[40]

A third party's testimony is, however, subject to the frailties of human memory. This can be remedied somehwat by having the third party take notes or prepare a memorandum immediately after the interview. If these notes are used to refresh memory, however, they can be discovered at trial.[41]

A further consideration with oral impeachment is that the impeaching lawyer must wait until he can put on witnesses again before the prior inconsistent statement can actually be proved. This waiting may deprive your impeachment of dramatic impact.

Recording a witness to discover and pin down his testimony has advantages and disadvantages. Consent of *all* parties is required.[42] Good practice is to record the consent. The advantage of taping is that it is easy to do; note taking is not required. As such it is particularly suited for complex and lengthy interviews. Also, some people who are reluctant to sign anything may well agree to be recorded.

The primary disadvantage is that recordings can be awkward to use in court. A foundation must be laid and the pertinent passage located for the playback. If the tape is transcribed the transcript must be authenticated. Tapes can be particularly awkward if the impeachment is through showing a series of small inconsistencies rather than one large inconsistency.

Written statements, on the other hand, have many advantages. The primary advantage is convenience as an impeachment tool. The witness himself authenticates the statement and his signature. Large and small inconsistencies can readily be pointed out. If the written statement is sworn the witness is discredited even more if it contradicts live sworn testimony.

Even if the witness does not testify inconsistently at trial the written sworn statement serves another great purpose. It makes the witness careful. He's more careful when giving the statement and more careful when testifying. This means he is less prone to exaggerate and be conclusionary in a way that harms you.

Getting Cooperation for a Written or Recorded Statement

How do you persuade a hostile witness to give you a written or recorded statement? An effective approach is to explain to the witness that what he has to say is important and that it is critical that there be no later misunderstanding as to what was said. Explain that the written or recorded statement is a great protection for him, as no one later can twist his words. Offer to give him a copy of the statement.

It usually is best to not ask for the written or recorded statement up front, but after you've had a chance to gain his confidence and go through what he knows.

Taking a Written Statement

The best way to take a written statement is to use the standard sworn statement form (DA Form 2823) and standard procedures such as initialing mistakes, etc.[43] Take the statement in the same way you interview. Have the witness write out the relevant facts in a narrative form. Then you pin down the important points by writing out questions and having the

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[40] PF.3-3.1(f); DF 4-4.3(d); *see* DR 5-10(B), 5-102(A).

[41] Mil. R. Evid. 612.

[42] *All* parties to a recorded conversation must give *prior* consent. Army Reg. No. 600-20, Army Command Policy and Procedure, para. 5-21 (15 Oct. 1980). The broad language of AR 600-20 would seem to require that a third party witness also give consent.

[43] FM 19-20, 111-118.

witness write out the answers. Make your last question, "Do you wish to add anything or make any corrections?" Have another lawyer place the witness under oath. Don't type it up. A handwritten statement in the witnesses own words and grammatical errors is much more convincing than a rephrased, typed statement.

This procedure takes time but pays dividends. It may be too cumbersome for complex or lengthy matters. But for pinning down a witness on the few really essential points of his testimony it works well.

Finally, it should be remembered that it may be wise to pin down *your* witness if it appears his memory is poor, if you fear distortion or discloration by subsequent interviews of opposing counsel, or if you discover in your interview significant facts not revealed in other statements or testimony. The additional statements are extremely useful in refreshing recollection and in rebutting charges of recent fabrication or improper influence or motive.[44]

V. The Foreign Witness

How do you prepare the foreign (non-English speaking, non-U.S. national) witness to testify?

Preparation is the same except for a few additions. The anxiety most witnesses naturally feel will be heightened for the foreigner. A little preparation goes a long way towards a credible presentation.

If you are the proponent of the witness you must explain about speaking through the interpreter and about our system of trial. The witness must be told to say a few sentences at a time so the interpreter can translate it all.

As for our system of trial you should explain who will question and in what order and the role of the opposing counsel in cross-examination. The witness must be assured that the seemingly skeptical cross-examiner is just doing his job to limit the damage of the testimony and the witness should not take it personally.

Sometimes because of circumstances you will only have a limited time to prepare a foreign witness, especially at an Article 32 investigation. At a minimum, in your five minute hallway session you should discuss what the accused is charged with, where the witness' testimony fits in, that he is there to tell the truth, that he is to testify as to facts, who will question him, and the role of opposing counsel.

If you are the opponent of a foreign witness you must still pin the witness down. Since written statements are impractical you should attempt to, with the consent of all parties, including the interpreter, record the interview.

VI. Conclusion

This brief article has presented a basic methodology for new military counsel to prepare witnesses for trial.

At first reading it may seem a lengthy process. To this criticism there are three responses. First, with experience the process becomes second nature and easily manageable.

Second, this method of reading over and using the military judges' instructions will eventually make you expert in the law.

Third, it seems long because it is thorough. There is no substitute for thoroughness in trial preparation and few effective shortcuts. To be thorough you need a system, a way of doing business. This system will help you get started until you develop techniques to suit yourself and your situation.

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[44] *See* Mil. R. Evid. 801(d)(1)(B) which would admit such a statement as substantive evidence. If counsel did not get this statement of his own witness in writing, in a recording, or have a third party present he may have to withdraw to present this evidence. *See* note 40, *supra*.

Applying MRE 412: Should it be Used at Article 32 Hearings?

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Introduction

Is Military Rule of Evidence 412 (MRE 412), the "rape shield" rule, applicable during an Article 32 investigation? This Article argues that it is and proposes several justifications for that result. The Article also examines the costs involved in applying MRE 412 in this way.

The Military Rules of Evidence were promulgated on March 12, 1980 by Executive Order 12198. The Rules parallel the Federal Rules of Evidence (FRE) and replace former provisions in the Manual for Courts-Martial. MRE 412 follows the trend set by many states in drastically altering the type of evidence that can be presented during the trial of a nonconsensual sexual offense. Like its federal counterpart, MRE 412 purports to exclude all reputation or opinion evidence of a victim's prior sexual activity. It allows other evidence of the victim's sexual past to be admitted only if it is constitutionally required, demonstrates an alternative source to semen or injury, or shows prior sexual behavior between the accused and the victim. Additionally, for such evidence to be admitted, defense counsel must provide pretrial notice and the military judge must determine admissibility at an Article 39(a) hearing.[1]

[1] Military Rule of evidence 412 provides that:

(a) Notwithstanding any other provision of these rules or this Manual, in a case in which a person is accused of a nonconsensual sexual offense, reputation or opinion evidence of the past sexual behavior of a alleged victim of such nonconsensual sexual offense is not admissible.

(b) Notwithstanding any other provision of these rules or this Manual, in a case in which a person is accused of a nonconsensual sexual offense, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissable, unless such evidence other than reputation or opinion evidence is—

(1) admitted in accordance with subdivision (c) II) and (c)(2) and is constitutionally required to be admitted; or

(2) admitted in accordance with subdivision (c) and is evidence of—

(A) past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or injury; or

(B) past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual bhavior with respect to which the nonconsensual sexual offense is alleged.

(c) (1) If the person accused of committing a nonconsensual sexual offense intends to offer subdivision(b) evidence of specific instances of the alleged victim's past sexual behavior, the accused shall serve notice thereof on the military judge and the trial counsel.

(2) The notice described in paragraph (1) shall be accompanied by an offer or proof. If the military judge determines that the offer of proof contains evidence described in subdivision(b), the military judge shall conduct a hearing, which may be closed, to determine if such evidence is admissible. At such hearings the parties may call witnesses, icnluding the alleged victim, and offer relevant evidence. In a case before a court-martial composed of a military judge and members, the military judge shall conduct such hearings outside the presence of the members pursuant to Article 39(a).

(3) If the military judge determines on the basis of the hearing described in paragraph (2) that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the military judge specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

(d) For purpose of this rule, the term "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which a nonconsensual sexual offense is alleged.

(e) A "nonconsensual sexual offense" is a sexual offense in which consent by the victim is an affirmative defense or in which the lack of consent is an element of the offense. This term includes rape,

MRE 412, like the federal rule, is intended "to shield victims of sexual assaults from the often embarrassing and degrading cross-examination and evidence presentations common to prosecutions of such offenses."[2] It recognizes that victims of rape have traditionally been harassed at trial.[3] As President Carter said when he signed the federal rule into law, "too often rape trials have been as humiliating as the sexual assault itself."[4]

These provisions have two primary goals.[5] First, they are designed to end the harassment of victims. This principal purpose encompasses the protection of "rape victims from the degrading and embarrassing disclosure of intimate details about their private lives."[6] The second purpose is derivative of the first, the rules encourage the reporting and prosecuting of sexual offenses. Traditionally, women have been reluctant to report rapes and/or cooperate in their prosecution because of the personal emotional trauma anticipated at trial. The provisions are designed to remove this deterrent and to create an atmosphere in which victims are willing to participate in effective prosecution.[7]

Although the Military Rule and Federal Rule were enacted for the same reasons, there are a few differences between the two. First, MRE 412 applies to all nonconsensual sexual offenses, while FRE 412 applies only to "rape or assault with intent to commit rape." The drafters made this modification to apply the social policies behind (MRE 412) to the unique military environment. Effective prosecution and deterrence of *all* sexual offenses "is critical to military efficiency."[8] Second, MRE 412(c) modifies the procedural device by which evidence of the victim's past sexual behavior may be admitted to fit the military context.[9]

Left unanswered by the military rule, however, is the applicability of MRE 412 to the pretrial investigation. Support for the contention that it should be made be gleaned from the legislative history and judicial interpretation of the federal rule from which MRE 412 purports to be drawn.[10]

The Federal Rule

The intent of Congress in passing FRE 412 is clear: the Rule is to end the humiliation of victims. Dubbed the "Privacy Protection for Rape Victims Act of 1978" (Pub. L. 95-54082(a), Oct. 28, 1978), the Rule is intended to do exactly that—protect the privacy of victims. Several other drafts of a rape shield law were introduced before the form proposed by Congresswoman Elizabeth Holtzman was adopted. The drafters of the several forms are agreed, however, that the intent of the legislation was to "protect women from both injustice and indignity."[11]

The bill (H.R. 4727) was adopted by Congress without contest in October 1978. It is apparent that members of both the House and the

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forcible sodomy, assualt with intent to commit rape or forcible sodomy, indecent assault, and attempts to commit such offenses.

[2] S. Saltzberg, L. Schinasi, & D. Schleuter, Military Rules of Evidence 209 (1981) [hereinafter cited as Saltzberg].

[3] *See* Berger, *Man's Trial, Woman's Tribulation*, 77 Colum. L. Rev. 1 (1977).

[4] 14 Weekly Comp. Pres. Doc. 1902 (Oct. 30, 1978).

[5] A valid goal of the rule, though unarticulated by its proponents in this context, is to focus attention on the charge and thereby conserve judicial resources. *See* Schinpsi, *The Military Rules of Evidence: An Advocate's Too*, The Army Lawyer, May 1980, at 3.

[6] 124 Cong., Rec., 11944 (1978) (Remarks of Rep Mann).

[7] An empirical study of the effect of similar legislation in Washington found that punishment for offenders had become more certain. The conviction rate increased 1996—from 37% to 56%. Loh, *The Impact of Common Law and Reform Rape Statutes on Prosecution: Empirical Study*, 55 Wash. L. Rev. 543 (1980).

[8] Saltzburg, *supra* note 2, at 209.

[9] *Id.* at 211.

[10] *See* Analysis to Military Rule of Evidence 412, *reprinted in* Manual for Courts-Martial, United States, 1969 (Rev. ed.), App. 18 (C.3, 1 Sept. 1980).

[11] 124 Cong. Rec. 11944 (1978) (Remarks of Rep. Holtzman).

Senate were concerned about the "public humiliation of the victim herself" and the "unfortunate result of this practice [which] has been that women are hesitant to cooperate with police and prosecutors in bringing such cases to trial.[12] Ms. Holtzman's remarks preceding passage in the House summarize these concerns.

> Too often in this country victims of rape are humiliated and harassed when they report and prosecute the rape. Bullied and cross-examined about their prior sexual experiences, many find the trial almost as degrading as the rape itself. Since rape trials become inquisitions into the victim's morality, not trials of the defendant's innocence or guilt, it is not surprising that it is the least reported crime. It is estimated that as few as one in ten rapes is ever reported.
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> [O]ver 30 States have taken some action to limit the vulnerability of rape victims to such humiliating cross-examination of their past sexual experiences and intimate personal histories. In federal courts, however, it is permissible still to subject rape victims to brutal cross-examination about their past sexual histories. H.R. 4727 would rectify this problem in federal courts and I hope, also serve as a model to suggest to the remaining states that reform of existing rape laws is important to the equity of our criminal justice system.[13]

The legislative history of FRE 412 also demonstrates a congressional awareness of its potential military application, particularly at Article 32 investigations. During the 1976 Congressional hearings on "rape shield" legislation,[14] the committee heard testimony on the effect that Representative Holtzman's original bill, which, with slight modification became FRE 412, would induce. The only victim to testify at the hearing was Sergeant Deborah Lieberman, United States Marine Corps. Sergeant Lieberman was raped by three Marines while stationed in Norfolk, Virginia. The incident occurred off-post and was initially investigated by civilian authorities. Sergeant Lieberman testified about being harassed by the civilian authorities, who ultimately dropped the charges, and then about the military investigation and prosecution of the offense. She specifically highlighted the debasing nature of the defense's cross-examination during the Article 32 hearing.

> The military investigation was heard. And I don't know if you want the term for it; it is called an Article 32 investigation. It is very similar to a preliminary hearing in the civilian courts. That was held and I tell you some of the questions that the defense attorney asked me, he asked me if I had serviced 95 percent of the battalion; he asked if I enjoyed being beaten. He said: "He didn't say the word, 'penis,' Corporal Liberman, What word did he use? How exactly did he say that? Would you repeat that, please, for the other members to hear? Would you repeat it again?
>
> He asked me: "What were you wearing? What kind of blouse was it? Did you wear underwear?"[15]

Sergeant Leiberman further testified about the degrading and humiliating manner in which she was treated during the months that elapsed between the Article 32 investigation and trial. The military lawyers and other members of the command asked her insensitive and demoralizing questions. "I was raped physically during the assault, but I was raped mentally during the investigation period. They wanted to know: 'Well, do you want to quit?'" She felt she was

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[12] 124 Cong. Rec. 18580 (1978) (Remarks of Sen. Bayh).

[13] 124 Cong. Rec. 11944 (1978) (Remarks of Rep. Holtzman).

[14] Criminal Justice Subcommittee of House Judiciary Committee, 94th Cong., 2nd Session, July 29, 1976.

[15] *Proposed Privacy Protection for Rape Victims Act of 1978: Hearings on H.R. 4727 Before the Criminal Justice Subcomm. of the House Judiciary Comm.*, 94th Cong., 2d Sess. 57 (1976) (Testimony of Sergeant Lieberman).

"lucky because I had been beat up" because that corroborated her story.[16] By comparison:

> During the military court the proceedings were much more reserved ... the defense attorney did not use the gutter language that he used at the[Art. 32] investigation and he treated me with a little more respect that he had treated me before.[17]

Sergeant Lieberman's assailants were convicted.

After Sergeant Lieberman's testimony, members of the committee questioned her. Several of the questions explicitity concerned the Article 32 investigation. The tenor of those questions clearly seemed to indicate that the members of the committee thought FRE 412 should protect future victims from the kind of cross-examination to which Deborah Lieberman was subjected at the Article 32 investigation.

Representative Holtzman was most explicit when she asked, "Perhaps to hammer down the last nail, can you tell this subcommittee how you felt when the prosecuting lawyers and others in the hearings you went through asked you about the details of your prior sexual experience and probed into the intimate details of your life?"[18] Sergeant Lieberman responded that "the position was a feeling of the tables turning, was feeling of, who is on trial—me or them? And during the military court some specific questions were asked, but not nearly as many as were asked prior to court."[19]

Representative Mezvinsky asked, "I just want to make sure of one point. You said you were raped not only physically but raped mentally. In view of the experience you have had, what would you recommend we should do to guard against that experience of being raped mentally?" Sergeant Lieberman responded, "I think Ms. Holtzman is sponsoring but one part of other definite things that are needed for rape victims."[20]

Members of the subcommittee were expressly confronted with abusive treatment of a victim during an Article 32 hearing. They assumed that the rule which they were considering would rectify that situation in the future. Representative Hungate asked in disbelief, "Did your attorney object or the prosecutor who was handling the case, did he object to these questions—some of which you outlined to us?" Sergeant Lieberman responded, "No. That was in the Article 32 investigation and I kept looking for him, you know, are you going to help me. I guess the defense attorney just had his free hand".[21]

It was in that context of limiting the defense attorney's "free hand" at Article 32 investigations that the bill was considered and later passed. While it is clear that the members of the subcommittee were not specifically addressing which rules of evidence should apply to Article 32 investigations,[22] they apparently attempted to correct the situation. Congress addressed the problem as a matter of policy. The foremost policy considerations were protection of the victim which, in turn, would lead to an increased number of rape prosecutions and convictions. This goal would be undercut if MRE 412 did not apply to the preliminary hearing/investigation. As in the case of Deborah Lieberman, if the defense attorney could harass and degrade the victim at the Article 32 session, not only would she be publicly humiliated, but that humiliation would deter her from ever reporting incidents or, if she did, from cooperating in their prosecution. Why pass the bill if it would not apply to pretrial investigations? Its purposes would be defeated.

Not only did that rationale underpin congressional thinking, it convinced the drafters of the

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[16] *Id.* at 58.

[17] *Id.*

[18] *Id.* at 59. (Remarks of Rep. Holtzman).

[19] *Id.* at 60 (Testimony of Sergeant Lieberman).

[20] *Id.*

[21] *Id.* at 61.

[22] Questions asked of Sergeant Lieberman indicate the members lacked familiarity with military justice.

Military Rules of Evidence. In their analysis, the drafters noted that "it would clearly be unreasonable to suggest that Congress in protecting the victims of sexual offenses from the degrading and irrelevant cross-examination formerly typical of sexual cases would have intended to permit the identical examination at a military preliminary hearing that is not even presided over by a legally trained individual."[23]

Once enacted, the Federal Rule and its purpose were jealously safeguarded by the federal courts.

The Third Circuit Court of Appeals refused to require a psychiatric examination of the prosecutrix because to do so would violate the "spirit" of FRE 412.[24] The Tenth Circuit held that cross-examination of a victim concerning two alleged prior incidents of rape was properly excluded by the trial judge due to an improper offer of proof under FRE 412(b).[25] The Eight Circuit found that the trial court did not abuse its discretion by instructing defense counsel, before he cross examined the victim, that he should not inquire into her past sexual behavior without first laying a proper foundation and making an offer of proof.[26]

The Article 32 Investigation

The policies behind these protections should be considered in concert with the reasons for Article 32 investigations. Article 32 provides that a preliminary investigation should be held before any charge may be referred to a general court-martial. The purpose of the investigation is two-fold. First, it provides the commander with information as to the existence of evidence necessary to support the charges, so that baseless charges may be dismissed. Second, it provides the defense with an opportunity for discovery.[27] Often analogized to a federal grand jury proceeding,[28] the Article 32 investigation is more akin to a preliminary hearing.[29]

The investigation, which must be thorough and impartial, is conducted by an investigating officer who may or may not be an attorney. The hearing is "an integral part of the court-martial proceedings,"[30] designed to protect the accused's substantive rights. The accused has the right to confront and cross-examine witnesses, make a sworn or unsworn statement, and have the assistance of counsel.[31]

The Article 32 hearing itself is not for the most part bound by the formal rules of evidence.[32] Since the investigating officer must base his recommendation to the convening authority on the facts as they relate to the specific charges, substantive issues are confronted. If the investigating officer is not an attorney, he may be counseled on those substantive matters by an attorney who is uninvolved in the case. Counseling should be done with both parties present.[33]

This background discussion should be kept in mind as one evaluates how MRE 412 will be applied during Article 32 investigations. The underlying purposes of the Rule and of the investigation help define the kind of protection MRE 412 affords victims and how best that protection may be utilized.

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[23] Saltzburg, *supra* note 2 at 73.

[24] Virgin Island v. Scuito, 663 F.2d 869, 874 (3d Cir. 1980).

[25] United States v. Nez, No 79-2247 (10th Cir. Oct. 9, 1981).

[26] United States v. Holy Bear, 624 F.2d 853 (8th cir. 1980).

[27] United States v. Samuels, 10 C.M.A. 206, 27 C.M.R. 280 (1959).

[28] Sandell, *The Grand Jury and the Article 32: A Comparison*, 1 N. Ky St., L. Forum 25 (1973).

[29] *See generally* Manual for Courts-Martial United States, 1969 (Rev. ed.), para. 34.

[30] United States v. Nichols, 8 C.M.A. 119, 23 C.M.A. 119, 23 C.M.R. 343 (1957).

[31] Manual for Courts-Martial, United States, 1969 (Rev. ed.), para. 34. *See also* United States v. Tomaszewski, 8 C.M.A. 266, 24 C.M.R. 76 (1957); United States v. Judson, 3 M.J. 908 (A.C.M.R. 1977).

[32] United States v. Samuels, 10 C.M.A. 206, 27 C.M.R. 280 (1959).

[33] United States v. Payne, 3 M.J. 354 (C.M.A. 1977).

Several Legal Theories are Available to Apply MRE 412 to Article 32 Investigations

Because of the current state of the law, whether or not MRE 412 should apply at Article 32 hearings is a policy issue. It is suggested that Congress and the drafters of the Military Rules decided that issue—as a matter of policy—in the affirmative. Given that result, it remains to be decided how the rule should be applied. Several theories are available.

First, the drafters of the Military Rules suggest that MRE 412 can be applied via MRE 303 which prohibits degrading questions.[34] Second, if MRE 412 is construed as creating a privilege in the victim, the Rule applies directly via MRE 1101. Third, MRE 412 may be used as a standard to exclude past sexual matters because such evidence would be irrelevant. Fourth, MRE 1101 could be used to amend MRE 412 by making it expressly applicable at Article 32 investigations. This would avoid the limitations of MRE 1101(d) which states: "These rules (other than with respect to privileges) do not apply in investigative hearings pursuant to Article 32."[35] It would also breathe life into the connection between MRE 412 and MRE 303.

MRE 303 states that "no person may be compelled to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade that person."[36] In their analysis, the drafters of the Military Rules of Evidence contend that MRE 303, which is taken from Article 31(c), applies at Article 32 proceedings because Congress intended for it to apply. They also argue that all evidence covered by MRE 412 was found to be *per se* degrading and immaterial by Congress and "thus is within the ambit of Rule 303" (Article 31(c)).[37]

The problem with this analysis is that it is unclear how MRE 303 is to be invoked. Some have argued that the privilege created by MRE 303 is a personal or limited one and may only be raised by the victim. It would protect the victim's testimony, but other witnesses who have knowledge of the victim's reputation or prior sexual activity would be required to answer questions posed by the defense.[38]

This position is the most cogent, analytically, given the wording of MRE 303, but its practical effect would be to deny the protection Congress intended to afford victims. The victim would be spared answering degrading questions personally but would be embarrassed and humiliated by having others discuss the intimate details of her personal life. Her character not the wrong doing of her assailant, would be on trial. The defense would thus be able to divert the investigating officer's attention and, if the victim hoped to vindicate herself, she would be forced to defend her character and try to refocus attention on the crime.

This is not the kind of protection Congress intended. Rape victims would still be humiliated and deterred from reporting and prosecuting incidents. If the courts follow the route of the drafters and apply MRE 412 protections through MRE 303, they will have to allow the prosecutor or the investigating officer to act as the guardian of the victim's interests and permit one or both of them to invoke the Rule in her stead. This would be analogous to the government invoking the privilege to protect the identity of an informant under MRE 507. The standard to be used for other witnesses could be similar: Would the victim have been required to disclose the requested information were she asked? Unfortunately, this approach is contorted.

A second application involves using MRE 412 categorically to create a privilege in the victim's past sexual dealings akin to the penumbral right to privacy recognized in other situations by the United States Supreme Court.[39]

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[34] Saltzman, *supra* note 2, at 73.

[35] *Id.* at 424.

[36] *Id.* at 72.

[37] *Id.* at 73.

[38] *Id.* at 72.

[39] *See* Zablocki v. Redhail, 434 U.S. 374 (1978) (right to

Since the privilege originates in MRE 412, it would be directly applicable to Article 32 investigations per MRE 1101(d). This privilege would exclude evidence of the victim's past from both her own testimony and from that of other witnesses.

The problem here, as with the drafters' theory of invoking MRE 303, is who is to invoke the privilege? The most valid analytical tact, and the one used in other areas of privilege, is to deem the privilege a personal one and to allow only the victim to invoke it. As in the use of MRE 303, however, policy and congressional intent will demand that the Rule apply to other witnesses as well. To not allow the trial counsel or the investigating officer to raise the privilege on the victim's behalf is to gain create a situation in which the protection Congress intended is not fully afforded. Victims would still be subject to embarrassment and degradation and thus reluctant to cooperate with law enforcement officials.

The advantage of this approach over that offered by the drafters, is that the standard to be used in excluding evidence is less complex. With MRE 303, one must refer back to the policies of MRE 412 if not to the Rule itself to determine what is degrading and immaterial. With direct use of MRE 412, there is less ambiguity in the standard. One looks only to the Rule to see if evidence of prior sexual conduct falls into one of the three categories of admissibility.

There are two weaknesses in this argument. First, the drafters explicitly stated that MRE 412 was to apply via MRE 303. Second, and as with the drafters' approach, mental gymnastics are required to make the legal theory fit the result Congress intended.

A third possibility is using MRE 412 as a rule of relevance to exclude evidence. The Army Court of Military Review conceptually approached the Rule from this perspective in *United States v. Hollimon.*[40] In *Hollimon*, the court sustained the trial judge's refusal to admit testimony regarding the victim's reputation for promiscuity as a constitutional application of MRE 412(a). The court found that the basis "for both the federal rule and the military rule is relevance. The federal rule was a codification of the growing consensus among federal and state courts that the virtually unrestricted attack on a rape victim's sexual reputation ... frequently resulted in evidence of doubtful probative value but high potential for prejudice."[41] MRE 412 reflects a legislative decision that unchastity is *per se* irrelevant. "As such Rule 412 is no more than a specific application of the general principles of relevance in Rules 401 and 403."[42]

Implicit in the court's analysis is the belief that evidence of a victim's past sexual history should be excluded even if MRE 412 was abolished.[43] The general philosophy of the MRE is that only evidence that is helpful to the factfinder should be admitted. The evidence must make a fact more or less likely (MRE 401), and its probative value must outweight its prejudicial impact (MRE 403). In a sexual offense prosecution, the danger of unfair prejudice is particularly great when evidence of a victim's past sexual history is admitted. This evidence is likely to be improperly weighed by the factfinder, and ultimately used by the defense to cloud or confuse the important issues at trial. In addition, the evidence is rarely probative. Under MRE 403, this analysis would typically lead to exclusion of the evidence regardless of MRE 412.

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privacy includes right to marry); Roe v. Wade, 410 U.S. 113 (1973) (right to privacy includes woman's right to terminate pregnancy); Griswold v. Connecticut, 381 U.S. 479 (1965) (right of marital privacy includes right to contraceptives).

[40] 12 M.J. 791 (A.C.M.R. 1982). Further, evidence of the victim's prior sexual conduct, including relations with her former financee and a prior abortion, have been excluded at trial. *See* Reply to the Assignment of Errors, United States v. DeWayne, Cm No. 440696 (A.C.M.R. 1982).

[41] 12 M.J. at 743.

[42] *Id.*

[43] *Id.*

It is important to remember that MRE 1101(d) does not prohibit the investigating officer from using the Rule at Article 32 sessions; it only states that the Rules do not have to be used.[44] Discretion is given to the investigating officer in using all the rules. Given congressional intent, the strong policy arguments in favor of using MRE 412, and the arguments that regardless of MRE 412 the evidence is irrelevant, it is reasonable to expect every investigating officer to look to the rule for guidance. If the evidence would not be relevant or admissible at trial, its pretrial use seems questionable.[45]

The advantage of this approach, as in construing MRE 412 as a rule of privilege, is that the investigating officer looks directly to the Rule in determining relevance and admissibility of any evidence. A weakness is this theory is that investigating officers are not bound by the Rule, and the intended congressional protection may be entirely disregarded in some cases.

The simplest answer to this problem may be to amend MRE 1101(d) to provide that MRE 412 is applicable at Article 32 hearings or for the Court of Military Appeals to make it applicable through judicial holdings. It is suggested that this resolution would be fair to both the victim and the accused. The victim is assured of the protection Congress intended she have, and the accused is aware from the beginning of the applicable standards and could plan his defense accordingly.

There are Some Disadvantages Involved in Applying MRE 412 to Article 32 Proceedings

No legal rule is invoked without some costs and some benefits. The benefits of applying MRE 412 to Article 32 proceedings reside in enacting the policy goals and intent of Congress. The Rule will insure that victims are not "bullied and cross-examined about their prior sexual experience."[46] This in turn encourages women to report and aid in the prosecution of nonconsensual sexual offenses.

There are at least four disadvantages involved in extending the Rule's protections to Article 32 investigations. The first follows from an argument frequently made in academic circles, that the Rule itself is unconstitutional because it abridges the accused's sixth amendment rights.[47] MRE 412(c) was specifically drafted to avoid constitutional problems and *Hollimon* held that MRE 412(a) does not conflict with the fifth or sixth amendments to the Constitution. The court concluded that Hollimon "was not deprived of his right to present a defense but rather was merely precluded from cluttering the proceedings with unreliable rumors and unsupportable accusations."[48] Until the judiciary indicates that there is a constitutional problem, the executive branch has a duty to enforce fully the letter and spirit of MRE 412.

The second cost resides in changing the nature of the Article 32 hearing. Article 32 investigations are informal proceedings and less adversarial than actual trials. Applying MRE 412 at this stage invites a more adversial, formal proceeding. More likely than not, trial and defense counsel will constantly challenge the investigating officer to make difficult legal and even constitutional determinations, placing the lay investigating officer in a legal position he may not be equipped to handle. This result could vitiate the Article 32's purposes. Fairness to the accused may require that only military attorneys be appointed in cases of nonconsensual sexual offenses.

The third cost is that the amount of information available to a convening authority may now be limited. Because the commander will

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[44] *See* United States v. Kasto, 584 F.2d 268 (8th Cir. 1978), *cert. denied* 440 U.S. 930 (1979).

[45] K. Redden & S. Saltzburg, Federal Rules of Evidence Manual 295 (1981 cum. supp.)

[46] *See* discussion of third disadvantage of applying rule.

[47] 124 Cong. Rec. 18580 (1978) (Remarks of Sen. Biden).

[48] *See* Lanford & Bacchino, *Rape Victim Shield Laws and the Sixth Amendment*, 128 U. Pa. L. Rev. 544 (1980).

not be aware of the "full picture," he may refer more serious charges or refer them to a higher level court-martial than he would have had he known about the excluded evidence. However, this could be resolved by defense counsel submitting written offers of proof, or similar documents (the defendant may always submit a written statement), which could be forwarded to the commander with the pretrial report. These documents would fill in the picture and restore the accused's pretrial chances, for leniency, and, as long as all such pleadings and/or statements were confidential, the victim's privacy would be maintained.

A fourth cost resides in curtailing the accused's opportunity to discover admissible theories of defense under MRE 412(c). This harm can be rectified by using a standard at Article 32 sessions that is less stringent than that used at trial. In close cases, the investigating officer might give the benefit of any doubt to the accused and let evidence be introduced in an area where it might later be excluded. To insure that the victim's privacy interests are always protected, the investigating officer should require the defense to offer a theory of admissibility and make an offer of proof before making a decision. The investigating officer should be sensitive to and disapproving of questions posed in an embarrassing or harassing manner. The Article 32 hearing should be closed to the public and records of the proceeding should be sealed until the trial judge makes a ruling on the validity of the proposed defense theory.

Conclusion

Congress and the drafters of the Military Rules of Evidence intended that MRE 412's protections be available during Article 32 investigations. To not apply this Rule as intended encourages the continued humiliation of sexual offense victims.

There are several legal theories fostering application of MRE 412 to Article 32 hearings. The victim and the trial counsel or investigating officer on her behalf may invoke a privilege under MRE 303 or MRE 412. The investigating officer may exclude the evidence as irrelevant. The clearest route to MRE 412 protection is amending MRE 1101(d) making MRE 412 applicable at Article 32 hearings.

There are some costs involved in applying MRE 412 to Article 32 hearings, but they can be reconciled with its benefits with the adoption of a few practical suggestions. The use of judge advocates as investigating officers, the forwarding of confidential documents to the convening authority, and the use of a less stringent standard at the hearing accomplish this goal.

Gifts and Bequests to Foreign Nationals— Research Guidance for the Estate Planner

by Major Seward H. French, JAGC, USAR *

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The Judge Advocate General's School

Introduction

Legal assistance attorneys are occasionally asked to advise military clients about making gifts and bequests to foreign nationals. Providing correct advice on this subject requires careful legal research and attention to detail. The questions which these inquiries present require an understanding of applicable state law, federal statutes and regulations, and United States treaties. The purpose of this article is to provide help to the legal assistance attorney concerning how to research and find answers to the legal questions involved in making gifts and bequests to foreign nationals.

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Legal Background

The legal principles dealing with gifts and bequests to aliens may be unfamiliar. The following is a brief summary of these principles:

1. *General Legal Principles*

International law recognizes the right of every government to limit or restrict the property rights of foreigners.[1] In the United States, this authority is vested primarily in the states where the property is situated. Generally, no legal distinction is made between legal rights of aliens and citizens to own personal property. However, the rights of an alien to hold, convey, and inherit real property are frequently not co-equal with citizens. Removal of the alienage disability has been the subject of a number of treaties to which the United States is a party.

2. *Personal Property*

The general rule in the United States is that an alien may hold and convey personal property without restriction. Personalty is so transitory that it has been historically difficult to restrict its ownership by aliens.

3. *Reality at Common Law*

At common law, aliens have a defeasible interest in realty acquired by purchase, gift, or devise. The state may seek an escheat of the alien's realty by an action of office found.[2] An alien has no capacity at common law to hold or dispose of reality acquired through an interstate distribution.

4. *Treaty Regulation*

The rights of aliens in the transfer, devise, or inheritance of property are proper subjects of negotiation and regulation under the treaty-making powers of the United States. If a treaty conflicts with a provision of state law governing the property rights of aliens, the treaty provisions will control under the supremacy clause of the United States Constitution.

5. *State Law Regulation*

Subject to regulation by United States treaty, the states have the right to regulate the ownership of real estate by aliens. To the extent that the states enact legislation to alter the common law rules, the common law governing the rights of aliens to own and possess real property will not apply; if state regulation is not inclusive, the common law rules will apply. In this country, there has been a long history of restrictive state alien land laws. By these laws, states have attempted to prohibit or otherwise limit the ability of aliens to hold and dispose of real property.

6. *Federal Regulation*

Under the Constitution, Congress and the executive branch have authority to restrict commercial relations with foreign governments and foreign nations. The examples of federal regulation in this area are interesting and relate closely to United States foreign policy. For example, current federal regulations prohibit sending any check or draft to persons residing in Albania, Cuba, North Korea, Vietnam, and Soviet controlled Berlin because "there is ... no reasonable assurance that the payee ... will actually receive funds ... or be able to negotiate the check."[3] Federal regulations block transfers of assets from the United States to nationals of a number of communist countries including North Korea, Cambodia, and Vietnam.[4]

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[1] W. Newton, International Estate Planning § 11.09 (1981).

[2] An action of office found in a proceeding initiated by the government in order to conclusively determine the fact of alienage. It takes the form of an inquest conducted by a public officer. If the alien had naturalized prior to the action, then he acquires an indefeasible interest in the property. If, however, the individual holds an alien status at the time of the proceeding, the property is forfeited to the government. 1 W. Page, The Law of Wills § 17.7, at 818-19 (W. Bowe & D. Parker ed. 1960).

[3] 31 C.F.R. § 211.1 (1981).

[4] 31 C.F.R. §§ 500.201-.565 (1981).

Research Techniques and Methods

The summary of legal principles above suggests the extent of legal research that must be done to deal adequately with the problems of making gifts and bequests to foreign nationals. The following steps should be followed, in sequence, in conducting legal research.

1. *State Law/Domiciliary State*

The state law of the client's domicile will govern matters concerning the validity and execution of the client's will and the administration of his estate. In addition, the domicilary state law will generally control gratuitous transfers of the client's personal property.

2. *State Law/Situs of Real Property*

Once domiciliary state law has been reviewed, the law of the state(s) in which the client's real property is located must be examined. The law of the state in which the client's real property is located will govern the rights of aliens to own and dispose of real property. The attorney should check that state law does not prohibit ownership of real property by certain classes of aliens or impose registration or similar requirements.

3. *United States Treaties*

The attorney should next determine whether the United States is a party to a treaty or other international agreement which affects the rights of either the client or the intended beneficiary. A treaty between the United States and Great Britain entered into on March 2, 1899 deals specifically with the rights of nationals of one country to inherit and dispose of real and personal property located in the other country. This treaty has been acceded to by nearly all British Commonwealth countries. A quick reference to consult is *Treaties in Force—A List of Treaties and other Internation Agreements of the United States*, published annually by the Department of State, which lists treaties by country and subject matter.

4. *Federal Statutory Law*

Federal statutory law should be reviewed to determine whether federal legislation restricts the rights of citizens of the beneficiary's country to inherit or dispose of property located in the United States. For example, federal statutory law prohibits the ownership of land in United States *territories* by aliens.[5]

5. *Federal and State Gratuitous Transfer Taxes*

At this point, the attorney should check applicable federal and state law to determine whether the proposed gift or bequest creates special or unique gift or estate tax problems. Federal law imposes estate and gift taxes on gratuitous transfers by resident and nonresident aliens.

6. *Federal Regulations and Executive Orders*

Federal regulations and executive orders substantially restrict commercial dealings with and property transfers to citizens of countries with which the United States has poor or strained relationships. The Code of Federal Regulations index lists federal regulations and executive orders by subject matter and country. This index should be consulted and applicable federal regulations and executive orders reviewed. There are severe restraints imposed that limit property transfers of any kind of citizens of Cuba, North Korea, Vietnam, Cambodia, and several communist bloc countries. The regulations contain exceptions and procedures for obtaining exceptions that are beyond the scope of this article. As a minimum, the attorney should be certain to check the provisions of title 31 of the regulations[6] if the proposed beneficiary is a citizen of a country with which the United States has poor relationships.

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[5] 48 U.S.C. §§ 1501-12 (W 1976).

[6] 31 C.F.R. §§ 211.1, 500.201-.565 (1981).

Conclusion

This article provides a series of research steps for legal assistance attorneys to follow to assure themselves that proposed gifts and bequests to foreign nationals will be legally effective. Careful research by the legal assistance attorney should result in a well-conceived and well-developed estate plan for his client.

Judiciary Notes

US Army Legal Services Agency

Distribution of Convening Authority's Action

Staff Judge Advocates are reminded that notification of convening authority's action is to be provided to the commander of the accused's confinement facility and to the finance and accounting office which services that facility within 24 hours of the time the action is taken. *See* para. 12-3*a*, AR 27-10 (15 Aug 1977). A copy of the staff judge advocate's review should also be furnished to the confinement facility commander.

Digest—Article 69, UCMJ, Application

1. In *James*, SPCM 1982/5148, the accused was sentenced by a special court-martial with members to forfeit $750.00 pay per month for six months. The convening authority commuted the sentence to confinement at hard labor for 92 days, forfeiture of $150.00 pay per month for six months, and reduction to E-1 and suspended the execution of the confinement for six months, with the accused required to serve in the reduced grade of Sergeant E-5.

The convening authority is empowered to change a punishment to one of a different nature, as long as his action does not increase the severity of the sentence imposed by the court-martial. Paragraph 88*a*, MCM 1969 (Rev.). Generally, a sentence to any confinement is more severe than one to forfeitures. Moreover, a convening authority may not, under the guise of commuting a forfeiture to confinement, use Article 58a, UCMJ, to reduce the service member to a lower pay grade. In this case, the Judge Advocate General set aside the commuted sentence and reinstated the adjudged sentence as he determined that the convening authority's action had increased the severity of the accused's sentence. *Cf.* US v. Christensen, 12 C.M.A. 393, 30 C.M.R. 393 (1961).

2. When a record of trial is lost, a new record will be prepared and will become the record of trial in the case. Paragraph 82*h*, MCM 1969 (Rev.). This guidance for general courts-martial is also appropriate guidance for inferior courts-martial.

In a recent application submitted under the provisions of Article 69, UCMJ, *Ferrell*, SPCM 1982/5154, The Judge Advocate General granted relief in a special court-martial because of post-trial delay resulting from the unsuccessful attempt to prepare a reconstructed copy of the proceedings. When reviewed by TJAG, none of the errors and omissions, which occurred after trial and in preparing the reconstructed copy, could be corrected without further significant delay adverse to the due process rights of the accused.

Errors and omissions after trial on 20 April 1981 were:

a. The court-martial promulgating order was not sent to the place of confinement. Tracer actions by the confinement facility's SJA and IG resulted in a response, on 17 September 1981, that the record of trial had been misplaced and that a reconstructed record would take 60-90 days to complete. A copy of the reconstructed record was delivered to the accused on 15 October 1981.

b. The "reconstructed" record was authenticated on 9 October 1981 by the trial counsel without a reason stated for the absence of the judge's signature. On 4 November 1981, the trial counsel also authenticated what purported

to be a certificate of correction. From the date of trial to completion of the reconstructed record on 4 November 1981, 198 days elapsed.

c. The reconstructed record failed to indicate whether defense counsel had examined the record.

d. A second court-martial promulgating order was prepared sometime between September and November 1981, but backdated to 4 May 1981.

e. There was no indication by certificate or otherwise that the convening authority had signed a formal action in the case.

f. The record provided to the accused contained conflicting dates in the court-martial promulgating order, the charge sheet showed no referral for trial, and there were significant omissions (some, not all, later corrected in the government's copy), such as defense exhibits which had been admitted in evidence.

g. No explanation for the delay was furnished by the government. *See* US v. Lucy, 6 MJ 265 (CMA 1975).

As a result, the accused was caused to suffer a substantial delay in beginning to earn rank after successful rehabilitation and completion of training on 7 July 1981, he could not be reassigned to a regular line unit, could not graduate three weeks early from the retraining course because of superior performance, and could not reenlist because of "bad time" caused by his sentence to confinement at hard labor for 40 days even though both the accused and his unit commander were highly desirous of accused reenlisting. A number of cases, considered by TJAG pursuant to applications for relief under Article 69, UCMJ, have contained patent errors and irregularities which should have been noted and corrected at the time of supervisory review under Article 65(c), UCMJ. It appears that the importance of Article 65(c) review is not appreciated by certain judge advocates. As a general rule, it is the final review within the meaning of Article 76, UCMJ. To protect fully the interests of both the accused and the government, the judge advocate performing the supervisory review must assure that the findings and sentence are correct in law and fact in all respects before the record is declared to be legally sufficient.

Non-Judicial Punishment

Quarterly Punishment Rates Per 1000 Average Strength
January–March 1982

	Quarterly Rates
ARMY-WIDE	46.25
CONUS Army commands	47.44
OVERSEAS Army commands	44.24
USAREUR and Seventh Army commands	42.81
Eighth US Army	58.76
US Army Japan	17.37
Units in Hawaii	39.70
Units in Alaska	39.31
Units in Panama	59.02

Courts-Martial

Quarterly Court-Martial Rates Per 1000 Average Strength
January–March 1982

	GENERAL CM	*SPECIAL CM*		*SUMMARY CM*
		BCD	NON-BCD	
ARMY-WIDE	.48	.87	.60	1.39
CONUS Army commands	.35	.68	.50	1.50
OVERSEAS Army commands	.71	1.20	.77	1.20
USAREUR and Seventh Army commands	.80	1.29	.67	1.16
Eighth US Army	.52	1.00	1.20	1.27
US Army Japan		.39	.39	
Units in Hawaii	.16	.32	.98	.81
Units in Alaska	.46	2.20	.98	2.20
Units in Panama	.67	.67	1.48	2.56

NOTE: Above figures represent geographical areas under the jurisdiction of the commands and are based on average number of personnel on duty within those areas.

A MATTER OF RECORD

Notes from Government Appellate Division, USALSA

Charges and Specifications

The sufficiency of a specification to allege an offense continues to be a common error for appeal and is raised in several ways. In reversing some earlier precedents, the Army Court of Military Review, recently decided that the rules for determining the sufficiency of a court-martial specification do not apply to an allegation of misconduct on an Article 15 form. *United States v. Atchison*, ___ M.J. ___ (A.C.M.R. 14 May 1982); *United States v. Eberhardt*, ___ M.J. ___ (A.C.M.R. 29 April 1982). In *Eberhardt*, the record of nonjudicial punishment failed to allege that the departure from the place of duty was without authority. This omission would have been fatal in a court-martial specification. *See United States v. Fout*, 3 C.M.A. 565, 13 C.M.R. 121 (1953). However, since the servicemember was appraised of the nature of the misconduct and was protected from double punishment, the allegation was sufficient to permit the admission of the Article 15 record into evidence at trial. The court also rejected an allegation that the place of duty was not specific enough. Counsel must insure that court-martial charges alleging failures to repair are technically correct. An allegation of a failure to repair to "Headquarters Company, Building 900, 123th Infantry Battalion, Fort Anywhere" does not state a violation of Article 86(1) since the place of duty is not specific enough. The addition of a building number does not specifically allege a place of duty. *United States v. Sturkey*, 50 C.M.R. 110 (A.C.M.R. 1975); *United States v. Taylor*, SPCM 16432 (A.C.M.R. 20 May 1982).

Another area of considerable appellate litigation is the sufficiency of a specification to allege the wrongful possession, transfer or sale of cocaine "a habit-forming narcotic drug." The Army, Navy, and Air Force Courts of Military Review have held that cocaine is a habit-forming narcotic drug as a matter of law. To date, no decision of the United States Court of Military Appeals has changed the rulings of the service courts. While it is true that numerous cases involving the status of cocaine are pending before the Court of Military Appeals, *e.g.*

United States v. Ettleson, *pet. granted*, 8 M.J. 179 (C.M.A. 1979), the court is also denying petitions for grants of review in cases involving the same issue. *United States v. Holloway*, CM 41633 (A.C.M.R. 29 January 1982), *pet. denied*, ____ M.J. ____ (C.M.A. 30 April 1982). Counsel should continue to charge cocaine as a habit-forming narcotic drug until the law is modified. Proposed revisions to the Manual for Courts-Martial would change the drug classification scheme for punishment purposes. Attempts to except the word "narcotic" from the specification should be resisted. The phrase "habit-forming drug" as used in the Table of Maximum Punishments is merely a shorthand phrase for "habit-forming narcotic drug." *United States v. Turner*, 18 C.M.A. 55, 39 C.M.R. 55 (1968).

Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

The Judge Advocate General's Opinions

(Standards Of Conduct—Conflict Of Interests—General) Off-Duty Employment Of Military Personnel With Government Contractors Generally Permissible. DAJA-AL 1982/1440 (25 March 1982).

The Judge Advocate General was asked by ODCSPER to review the Army's policy on the off-duty employment of military personnel. In particular, the inquiry concerned the off-duty employment of noncommissioned officers with a Government contractor to provide job-related training during off-duty hours to soldiers under their supervision.

In response, The Judge Advocate General stated that off-duty employment of military personnel with government contractors is generally permissible provided it does not contravene the policies set forth in para. 2-6*a*, AR 600-50, and that such employment does not involve the holding of a concurrent federal position or result in the direct receipt of federal compensation for services rendered.

The Judge Advocate General suggested that a determination of whether any particular individual's off-duty employment violates any of these principles can best be made by the appropriate supervisor or commanding officer after considering all of the facts involved and consulting with his or her Deputy Standards of Conduct Counselor and the individual concerned.

Legal Assistance Items

Major Walter B. Huffman, Major John F. Joyce, Captain Timothy J. Grendell, and Major Harlan M. Heffelfinger
Administrative and Civil Law Division, TJAGSA

Legal Assistance Will Videotape

The Legal Assistance Branch of the Administrative and Civil Law Division, TJAGSA, has produced a videotape entitled "An Introduction to Writing Your Will." This 7½-minute videotape is designed for use in legal assistance office waiting rooms, unit preventive law classes, and predeployment briefings. The tape was field tested at Fort Hood and Fort Bliss, Texas.

The will presentation is the first in a series of legal assistance videotapes to be produced by the Legal Assistance Branch. Legal assistance offices can obtain a copy of the will videotape by sending a blank ¾-inch videotape cassette to The Judge Advocate General's School, US Army, Administrative & Civil Law Division, ATTN: ADA-LA, Charlottesville, VA 22901.

North Carolina Legal Assistance Program

The State Bar of North Carolina has initiated a three-phase military legal assistance pro-

gram. Phase one, "Operation Standby," involves more than 40 attorneys who have volunteered to provide telephonic advice on all aspects of North Carolina law to military legal assistance officers. Phase two offers in-court representation by volunteer civilian counsel who act as co-counsel with military legal assistance officers representing qualified military personnel. The third phase is a continuing legal education program for military legal assistance officers. The State Bar will offer a seminar each February at various military installations to update legal assistance officers on North Carolina law. This program was initiated by Chief Judge Robinson O. Everett. It currently is directed by Mr. Mark E. Sullivan.

Reserve Affairs Items

Reserve Affairs Department, TJAGSA

FORSCOM Overstrength Policy

Headquarters, United States Army Forces Command, has clarified overstrength policies for USAR units in its letter of instruction (LOI) of 16 April 1982, subject: Letter of Instruction for Implementation of Enhanced Strength and Overstrength Policies in the USAR. Paragraph 7a(1) authorizes lieutenant and captain positions to be filled up to 125 percent of the required strength of the current authorization document. Enlisted overstrength up to 25 percent excess of the required strength is authorized by para 7a(2) of the LOI. These authorizations will continue until publication of AR 140-1 and Volume III, Chap 5, Army Mobilization and Operations Planning System.

However, the foregoing should not be construed as a license for overstrength in JAGSO units without regard to management of personnel assets. The FORSCOM SJA has advised in his letter of 13 May 1982, subject: Enhanced Strength and Overstrength Policies in the USAR, that "overstrengths in JAGSO positions should be authorized to permit the unit to quickly fill the additional positions in the new TOE. In addition, overstrengths in JAGSO's located in proximity to areas where new JAGSO's will be activated is encouraged." Consequently, the SJA, First U.S. Army, has limited officer overstrengths as follows: MLC—1 major/chief admin law, 2 captains—military justice officer; court-martial trial (defense) teams—1 major, trial (defense) counsel; and, international law teams—1 major and 1 captain—claims officers. Exceptions on a case-by-case basis will be considered. Officers in overstrength positions are not eligible for unit vacancy promotions.

FROM THE DESK OF THE SERGEANT MAJOR

by Sergeant Major John Nolan

1. *Supervising:*

I have overheard many supervisors make comments to subordinates "Why can't you be like . . .?" "You look like a . . . . ." "You: can't do anything right."

How often do we overhear our people demeaned and belittled by such careless, unthinking statements and do nothing to try to change it? These and similar put-downs are used by many of us as supervisors. Perhaps you have done the same in some frustrating moment of difficulty at work. Perhaps this manner of speaking has become such a habit that we don't realize that we use such language or the harmful impact of such statements.

When such words are spoken to us, do we feel good or uplifted? Of course not! They are

not spoken in the manner of a good supervisor— constructive and helpful. What we are really saying is: "I don't respect you. I don't care for your feelings as a person. You are below me."

The habit of using cutting, belittling words and phrases needs to be eliminated if we are to be effective supervisors and individuals in the Judge Advocate General's Corps. Such words can turn a capable, talented member of the Corps into an individual of little achievement, less motivation, and no confidence.

So, instead of spurting out harsh, cutting and demeaning responses during your next aggravating situation, put a "governor on your mouth." Instead, say, "I think you can be neater," or "You need to be more careful," or "Let me show you the correct way."

By doing this it helps each of us, as supervisors, to show respect and puts us in a more constructive frame of mind—thus dealing with our subordinates in a more positive, professional and beneficial manner.

If you have been guilty of expressing demeaning "put-downs" to others, STOP and ask yourself if you would like them said to you.

Show respect for the feelings of your subordinates. In turn, they will show more respect for you as a supervisor.

2. *Promotion:*

Congratulations to those individuals who were selected for promotion to E7 by the recent selection board.

American Bar Association, Young Lawyers Division, Affiliate Outreach Meeting

Captain Bruce E. Kasold, ABA/YLD Delegate
Tort Branch, Litigation Division, OTJAG

The Young Lawyers Division (YLD) is the largest single organization within the American Bar Association (ABA). All members of the ABA who are 36 years of age or younger are automatically members of the YLD at no additional cost. Because of its large constituency, the YLD plays a significant role in the development of ABA policy and programs.

One of the most active endeavors of the YLD is the affiliate outreach program. This program is designed to provide guidance and assistance to young lawyers sections of the various state bars in the development of meaningful programs within their community. The affiliate outreach program is also a means of coordinating efforts between the numerous state sections, and it provides a forum to share the ideas and projects of each of the affiliates.

While much coordination and passing of ideas is done over the telephone, by personal visits, or through informal means, the traditional method of disseminating information is through the affiliate outreach meeting. The most recent affiliate outreach meeting, held in Baltimore, Maryland, on 14–15 May 1982, was exciting, intensive, and informative. Project presentations were made by either staff personnel of the YLD or, more frequently, by members of a state affiliate which has initiated its own successful program. The latter permitted discussion with those who have had "hands on" experience with a particular project. A description of some of the projects follows.

Dispute Resolution Centers

Many state bar associations have initiated dispute settlement centers as an alternative to expensive, time-consuming litigation. These "centers" usually consist of trained mediators or arbitrators to whom clients are referred by their attorneys when it is believed the dispute is of a nature which is conducive to mediation or arbitration. Referrals are also made by judges, consumer protection agencies, city hall,

court clerks, and others. If arbitration is requested, the parties agree beforehand to be bound by the decision of the arbitrator; in many states, these decisions are statutorily nonreviewable in the state courts. The mediators or arbitrators often, but not necessarily, consist of local attorneys who have been given special training by the young lawyers section of the state bar. Very often the mediator or arbitrator provides his/her services *pro bono*.

The types of disputes normally referred to an alternative dispute settlement center are the simple assault, the small claim, domestic relations or juvenile matters. Experience has shown that those disputes involving money are the least likely to be successfully resolved by mediation.

From a JAG point of view it is important to know that dispute resolution centers exist and that one might be in your area. If there is a center available, it might be appropriate to refer your client there for resolution of his/her problem. Interested attorneys may wish to inquire about participating as mediators or arbitrators. These programs are a sincere effort by the community to address the backlog of the courts and the expenses associated with litigation.

Institutionalized Elderly

Many young lawyer sections of the various state bars have published informative and helpful booklets on the rights of senior citizens living in nursing homes. There are also programs to provide simple legal assistance to the elderly such as an attorney preparing a will or acting as guardian for an elderly. Again, for the JAG officer, it is important to realize such programs exist for the elderly. If one does exist in your area, you can probably obtain information which might be helpful to your client, who is either elderly or has an elderly dependent, and which might otherwise not have been known to you.

Victim Witness Centers

In recognition of the fact that the victim of a crime often experiences significant problems after the crime, victim witness centers have begun to spread. Initially started with federal funds, these centers are now being operated with state or local funds or through private donations of money and time. Victims of crimes are given in-depth counseling on the judicial system and their role as witnesses in the event the case goes to trial. They are also kept continuously informed on the status of the case as it progresses to trial or out-of-court settlement. Counseling specifically geared to personal problems of the victim is also provided; for example, a rape victim might need such counseling. Those centers benefit not only the victim but the judicial system because the victim is more likely to be a willing witness at trial.

From the JAG viewpoint, this course provides a reminder that the victim of a crime often needs special counseling or guidance on the role he/she will play at trial.

Law Exploring

Your local scouting organization may have an exploring division and it may have a subdivision on the law. These organizations are an exciting way for any attorney to become involved in the community. Basically, an attorney could provide his services by assisting in developing and organizing law related activities, *e.g.*, a mock trial, or a visit to the court, or he/she could offer his/her services by having an "open house" in his/her own office. In effect, Law Exploring extends Law Day over the entire year. It is a good way to get young people interested in the law and, in our case, law within the military.

Other Activities

In addition to the above activities, young lawyer sections of state bars have established programs to provide legal services to battered women and programs geared to the problems of the deaf, as well as programs concerned with the rights of children.

In a nutshell, many of these programs offer assistance which would be helpful and useful to the military attorney and/or his/her client. It is

in the best interests of each that the attorney keep informed of what the local bars offer in the way of assistance or activities.

In closing, I would like to add that I broached the subject of involving military attorneys in local bar activities, including social functions. Everyone was positive about developing such involvement and I will address this issue with them again, in the future. In the meantime, I highly recommend that each young military lawyer contact the young lawyers section of the state in which he/she is located and personally express his/her interest in getting involved. I am sure you will receive a positive response.

Any inquiries concerning the ABA/YLD affiliate outreach meeting should be addressed to DAJA-LTT (ATTN: Captain Bruce E. Kasold), Pentagon, Room 2D439, Washington, DC 20310 (AUTOVON: 225-6435).

Current Materials of Interest

1. Regulations

Number	*Title*	*Change*	*Date*
AR 55–46	Travel of Dependents and Accompanied Military and Civilian Personnel To, From or Between Overseas Areas.	903	11 Jun 82
AR 135–155	Promotion of Commissioned Officers and Warrant Officers Other Than General Officers.	10	15 Jun 82
AR 135–210	Order to Active Duty as Individuals During Peacetime.		1 Jul 82
AR 230–1	The Nonappropriated Fund System.	9	1 Jun 82
AR 635–200	Enlisted Separations.	907	4 Jun 82

2. Articles.

Imwinkelreid, *Forensic Hair Analysis: The Case Against the Underemployment of Scientific Evidence*, 39 Wash & Lee L. Rev. 41 (1982).

Volk, *Processing and Negotiating the Military Medical Malpractice Claim*, 18 Trial 51 (June 1982).

Note, *The Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act: Dual Response to Interstate Child Custody Problems*, 39 Wash. & Lee L. Rev. 149 (1982).

Note, *Evidence—Exclusionary Rule—An Alternative to the Eroded Exclusionary Rule, Federal Rule of Evidence 608(b)*, 4 West. N. E. L. Rev. 133 (1981).

Note, *The Military and State Secrets Privilege: Protection for the National Security or Immunity for the Executive*, 91 Yale L.J. 570 (1982).

CLE News

1. The 1983 Contract Law Symposium

The faculty of the Contract Law Division of The Judge Advocate General's School is pleased to announce the following tentative topics for the 1983 Government Contract Law Symposium: "The Impact of the Carlucci Initiatives on Major Acquisitions: A Lawyer's Perspective"; "Negotiation and Source Selection Problems in Acquisition"; "The Program Manager and the Legal Advisor"; "New Developments in the Commercial Activities Program"; "Labor Problems with CAP Contracts"; "Statements of Work: Problems and the Role of Legal

Advisor"; "Small Business and CAP Contracts"; "A Construction Law Update"; "A&E Contracting"; "Contractor Remedies: Bid Protests, The Claims Court, Board of Contract Appeals"; "Fraud, Waste and Abuse in Federal Acquisition"; "Congress and the Acquisition Process." The Symposium will be held 10–14 January 1983.

2. DTIC Accession Notice

The Contract Law and Fiscal Law Deskbooks authored by the Contract Law Division, TJAGSA, are now available through the Defense Technical Information Center (DTIC):

AD NUMBER	*TITLE*
AD B064933	Contract Law, Contract Law Deskbook/JAGS-ADK-82-1
AD B064947	Contract Law, Fiscal Law Deskbook/JAGS-ADK-82-2

The nine character identifier beginning with the letters AD are numbers assigned by DTIC and must be used when ordering the publications. Those ordering publications are reminded that they are for government use only.

3. Resident Course Quotas

Attendance at resident CLE courses conducted at The Judge Advocate General's School is restricted to those who have been allocated quotas. Quota allocations are obtained from local training offices which receive them from the MACOM's. Reservists obtain quotas through their unit or RCPAC if they are non-unit reservists. Army National Guard personnel request quotas through their units. The Judge Advocate General's School deals directly with MACOM and other major agency training offices. Specific questions as to the operation of the quota system may be addressed to Mrs. Kathryn R. Head, Nonresident Instruction Branch, The Judge Advocate General's School, Army, Charlottesville, Virginia 22901 (Telephone: AUTOVON 274-7110, extension 293-6286; commercial phone: (804) 293-6286; FTS: 938-1304).

4. TJAGSA CLE Course Schedule

August 2–6: 11th Law Office Management (7A-713A).

August 9–20: 93d Contract Attorneys (5F-F10).

August 16–May 20, 1983: 31st Graduate Course (5-27-C22).

August 23–27: 6th Criminal Trial Advocacy (5F-F32).

September 1–3: 6th Criminal Law New Developments (5F-F35).

September 13–17: 20th Law of War Workshop (5F-F42).

September 20–24: 68th Senior Officer Legal Orientation (5F-F1).

October 5–8: 1982 Worldwide JAG Conference.

October 13–15: 4th Legal Aspects of Terrorism (5F-F43).

October 18–December 17: 99th Basic Course (5-27-C20).

October 18–21: 5th Claims (5F-F26).

October 25–29: 7th Criminal Trial Advocacy (5F-F32).

November 1–5: 21st Law of War Workshop (5F-F42).

November 2–5: 15th Fiscal Law (5F-F12).

November 15–19: 22d Federal Labor Relations (5F-F22).

November 29–December 3: 11th Legal Assistance (5F-F23).

December 6–17: 94th Contract Attorneys (5F-F10).

January 6–8: Army National Guard Mobilization Planning Workshop.

January 10–14: 1983 Contract Law Symposium (5F-F11).

January 10–14: 4th Administrative Law for Military Installations (Phase I) (5F-F24).

January 17–21: 4th Administrative Law for Military Installations (Phase II) (5F-F24).

January 17–21: 69th Senior Officer Legal Orientation (5F-F1).

January 24–28: 23d Federal Labor Relations (5F–F22).

January 24–April 1: 100th Basic Course (5–27–C20).

February 7–11: 8th Criminal Trial Advocacy (5F–F32).

February 14–18: 22nd Law of War Workshop (5F–F42).

February 28–March 11: 95th Contract Attorneys (5F–F10).

March 14–18: 12th Legal Assistance (5F–F23).

March 21–25: 23d Law of War Workshop (5F–F42).

March 28–30: 1st Advanced Law of War Seminar (5F–F45).

April 6–8: JAG USAR Workshop.

April 11–15: 2nd Claims, Litigation, and Remedies (5F–F13).

April 11–15: 70th Senior Officer Legal Orientation (5F–F1).

April 18–20: 5th Contract Attorneys Workshop (5F–F15).

April 25–29: 13th Staff Judge Advocate (5F–F52).

May 2–6: 5th Administrative Law of Military Installations (Phase I) (5F–F24).

May 9–13: 5th Administrative Law for Military Installations (Phase II) (5F–F24).

May 10–13: 16th Fiscal Law (5F–F12).

May 16–June 3: 26th Military Judge (5F–F33).

May 16–27: 96th Contract Attorneys (5F–F10).

May 16–20: 11th Methods of Instruction.

June 6–10: 71st Senior Officer Legal Orientation (5F–F1).

June 13–17: Claims Training Seminar (U.S. Army Claims Service).

June 20–July 1: JAGSO Team Training.

June 20–July 1: BOAC: Phase II.

July 11–15: 5th Military Lawyer's Assistant (512–71D/20/30).

July 13–15: Chief Legal Clerk Workshop.

July 18–22: 9th Criminal Trial Advocacy (5F–F32).

July 18–29: 97th Contract Attorneys (5F–F10).

July 25–September 30: 101st Basic Course (5–27–C20).

August 1–5: 12th Law Office Management (7A–713A).

August 15–May 19, 1984: 32nd Graduate Course (5–27–C22).

August 22–24: 7th Criminal Law New Developments (5F–F35).

September 12–16: 72nd Senior Officer Legal Orientation (5F–F1).

October 11–14: 1983 Worldwide JAG Conference.

October 17–December 16: 102nd Basic Course (5–27–C20).

5. Civilian Sponsored CLE Courses

October

1: SBT, Damages Institute, McAllen, TX.

1: SCB, Evidence, Charleston, SC.

1–2: ALIABA, International Criminal Law, Arlington, VA.

3–7: NCDA, Trial Advocacy for Prosecutors, Phoenix, AZ.

3–22: NJC, General Jurisdiction—General, Reno, NV.

3–8: NJC, Civil Litigation—Graduate, Reno, NV.

3–8: NJC, Adm. Law: Fair Hearing—General, Reno, NV.

4–6: TUCLE, Tulane Tax Institute, New Orleans, LA.

7: VACLE, Civil Litigation, Abingdon, VA.

7: SBT, Damages Institute, Austin, TX.

8: VACLE, Civil Litigation, Roanoke, VA.

8: SBT, Damages Institute, Midland, TX.

8: SCB: First Amendment Law, Columbia, SC.

10–15: NJC, Adm. Law: Evaluating Medical Impairments—Graduate, Reno, NV.

10–15: NJC, Criminal Evidence—Graduate, Reno, NV.

11: PBI, Federal Appellate Advocacy, Philadelphia, PA.

11–15: SLF, Antitrust Law, Dallas, TX.

13: VACLE, Civil Litigation, Staunton, VA.

14: VACLE, Civil Litigation, McLean, VA.

15–16: GTULC, Defense of Criminal Cases, Washington, DC.

17–22: NJC, Civil Rights—Specialty, Reno, NV.

17–22: NJC, Adm. Law: High Volume Proceedings—Graduate

21: VACLE, Civil Litigation, Richmond, VA.

21: BPI, Workers' Compensation, Philadelphia, PA.

21–22: SLF, Labor Law, Dallas, TX.

22: VACLE, Civil Litigation, Norfolk, VA.

24–29: NJC, Perceiving Stereotypes in Court—Specialty, Reno, NV.

For further information on civilian courses, please contact the institution offering the course, as listed below:

AAA: American Arbitration Association, 140 West 51st Street, New York, NY 10020.

AAJE: American Academy of Judicial Education, Suite 437, 539 Woodward Building, 1426 H Street NW, Washington, DC 20005. Phone: (202) 783-5151.

ABA: American Bar Association, 1155 E. 60th Street, Chicago, IL 60637.

ABICLE: Alabama Bar Institute for Continuing Legal Education, Box CL, University, AL 35486.

AKBA: Alaska Bar Association, P.O. Box 279, Anchorage, AK 99501.

ALEHU: Advanced Legal Education, Hamline University School of Law, 1536 Hewitt Avenue, St. Paul, MN 55104

ALIABA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 4025 Chestnut Street, Philadelphia, PA 19104.

ARKCLE: Arkansas Institute for Continuing Legal Education, 400 West Markham, Little Rock, AR 72201.

ATLA: The Association of Trial Lawyers of America, 1050 31st St., N.W. (or Box 3717), Washington, DC 20007. Phone: (202) 965-3500.

BNA: The Bureau of National Affairs Inc., 1231 25th Street, N.W., Washington, DC 20037.

CALM: Center for Advanced Legal Management, 1767 Morris Avenue, Union, NJ 07083.

CCEB: Continuing Education of the Bar, University of California Extension, 2150 Shattuck Avenue, Berkeley, CA 94704.

CCH: Commerce Clearing House, Inc., 4025 W. Peterson Avenue, Chicago, IL 60646.

CCLE: Continuing Legal Education in Colorado, Inc., University of Denver Law Center, 200 W. 14th Avenue, Denver, CO 80204.

CLEW: Continuing Legal Education for Wisconsin, 905 University Avenue, Suite 309, Madison, WI 53706.

DLS: Delaware Law School, Widener College, P.O. Box 7474, Concord Pike, Wilmington, DE 19803.

FBA: Federal Bar Association, 1815 H Street, N.W., Washington, DC 20006. Phone: (202) 638-0252.

FJC: The Federal Judicial Center, Dolly

Madison House, 1520 H Street, N.W., Washington, DC 20003.

FLB: The Florida Bar, Tallahassee, FL 32304.

FPI: Federal Publications, Inc., Seminar Division Office, Suite 500, 1725 K Street NW, Washington, DC 20006. Phone: (202) 337-7000.

GICLE: The Institute of Continuing Legal Education in Georgia, University of Georgia School of Law, Athens, GA 30602.

GTULC: Georgetown University Law Center, Washington, DC 20001.

HICLE: Hawaii Institute for Continuing Legal Education, University of Hawaii School of Law, 1400 Lower Campus Road, Honolulu, HI 96822.

HLS: Program of Instruction for Lawyers, Harvard Law School, Cambridge, MA 02138

ICLEF: Indiana Continuing Legal Education Forum, Suite 202, 230 East Ohio Street, Indianapolis, IN 46204.

ICM: Institute for Court Management, Suite 210, 1624 Market St., Denver, CO 80202. Phone: (303) 543-3063.

IPT: Institute for Paralegal Training, 235 South 17th Street, Philadelphia, PA 19103.

KCLE: University of Kentucky, College of Law, Office of Continuing Legal Education, Lexington, KY 40506.

LSBA: Louisiana State Bar Association, 225 Baronne Street, Suite 210, New Orleans, LA 70112.

LSU: Center of Continuing Professional Development, Louisiana State University Law Center, Room 275, Baton Rouge, LA 70803.

MCLNEL: Massachusetts Continuing Legal Education—New England Law Institute, Inc., 133 Federal Street, Boston, MA 02108, and 1387 Main Street, Springfield, MA 01103.

MIC: Management Information Corporation, 140 Barclay Center, Cherry Hill, NJ 08034.

MOB: The Missouri Bar Center, 326 Monroe, P.O. Box 119, Jefferson City, MO 65102.

NCAJ: National Center for Administration of Justice, Consortium of Universities of the Washington Metropolitan Area, 1776 Massachusetts Ave., NW, Washington, DC 20036. Phone: (202) 466-3920.

NCATL: North Carolina Academy of Trial Lawyers, Education Foundation Inc., P.O. Box 767, Raleigh, NC. 27602.

NCCD: National College for Criminal Defense, College of Law, University of Houston, 4800 Calhoun, Houston, TX 77004.

NCDA: National College of District Attorneys, College of Law, University of Houston, Houston, TX 77004. Phone: (713) 749-1571.

NCJFCJ: National Council of Juvenile and Family Court Judges, University of Nevada, P.O. Box 8978, Reno, NV 89507.

NCLE: Nebraska Continuing Legal Education, Inc., 1019 Sharpe Building, Lincoln, NB 68508.

NCSC: National Center for State Courts, 1660 Lincoln Street, Suite 200, Denver, CO 80203

NDAA: National District Attorneys Association, 666 North Lake Shore Drive, Suite 1432, Chicago, IL 60611.

NITA: National Institute for Trial Advocacy, William Mitchell College of Law, St. Paul, MN 55104

NJC: National Judicial College, Judicial College Building, Unversity of Nevada, Reno, NV 89507. Phone: (702) 784-6747.

NLADA: National Legal Aid & Defender Association, 1625 K Street, NW, Eighth Floor, Washington, DC 20006. Phone: (202) 452-0620.

NPI: National Practice Institute Continuing Legal Education, 861 West Butler Square, 100 North 6th Street, Minneapolis, MN 55403. Phone: 1-800-328-4444 (In MN call (612) 338-1977).

NPLTC: National Public Law Training Center,

2000 P. Street, N.W., Suite 600, Washington, D.C. 20036.

NWU: Northwestern University School of Law, 357 East Chicago Avenue, Chicago, IL 60611

NYSBA: New York State Bar Association, One Elk Street, Albany, NY 12207.

NYSTLA: New York State Trial Lawyers Association, Inc. 132 Nassau Street, New York, NY 12207.

NYULS: New York University School of Law, 40 Washington Sq. S., New York, NY 10012

NYULT: New York University, School of Continuing Education, Continuing Education in Law and Taxation, 11 West 42nd Street, New York, NY 10036.

OLCI: Ohio Legal Center Institute, 33 West 11th Avenue, Columbus, OH 43201.

PATLA: Pennsylvania Trial Lawyers Association, 1405 Locust Street, Philadelphia, PA 19102.

PBI: Pennsylvania Bar Institute, P.O. Box 1027, 104 South Street, Harrisburg, PA 17108.

PLI: Practising Law Institute, 810 Seventh Avenue, New York, NY 10019. Phone: (212) 765-5700.

SBM: State Bar of Montana, 2030 Eleventh Avenue, P.O. Box 4669, Helena, MT 59601.

SBT: State Bar of Texas, Professional Development Program, P.O. Box 12487, Austin, TX 78711.

SCB: South Carolina Bar, Continuing Legal Education, P.O. Box 11039, Columbia, SC 29211.

SLF: The Southwestern Legal Foundation, P.O. Box 707, Richardson, TX 75080.

SMU: Continuing Legal Education, School of Law, Southern Methodist University, Dallas, TX 75275

SNFRAN: University of San Francisco, School of Law, Fulton at Parker Avenues, San Francisco, CA 94117.

TUCLE: Tulane Law School, Joseph Merrick Jones Hall, Tulane University, New Orleans, LA 70118

UHCL: University of Houston, College of Law, Central Campus, Houston, TX 77004.

UMLC: University of Miami Law Center, P.O. Box 248087, Coral Cables, FL 33124.

UTCLE: Utah State Bar, Continuing Legal Education, 425 East First South, Salt Lake City, UT 84111.

VACLE: Joint Committee of Continuing Legal Education of the Virginia State Bar and The Virginia Bar Association, School of Law, University of Virginia, Charlottesville, VA 22901.

VUSL: Villanova University, School of Law, Villanova, PA 19085.

By Order of the Secretary of the Army:

E. C. MEYER
General, United States Army
Chief of Staff

Official:

ROBERT M. JOYCE
Major General, United States Army
The Adjutant General

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